United Nations E/C.19/2017/4

Economic and Social Council

Distr.: General
7 February 2017

Original: English

Permanent Forum on Indigenous Issues
Sixteenth session
New York, 24 April-5 May 2016
Item 8 of the provisional agenda*
Discussion on the theme "Tenth anniversary of the United Nations Declaration on the Rights of Indigenous Peoples: measures taken to implement the Declaration"

Tenth anniversary of the United Nations Declaration on the Rights of Indigenous Peoples: measures taken to implement the Declaration

Note by the Secretariat

Summary

As 2017 marks the tenth anniversary of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the Permanent Forum on Indigenous issues decided at its fifteenth session to include in the provisional agenda of its sixteenth session a discussion on the theme "Tenth anniversary of the United Nations Declaration on the Rights of Indigenous Peoples: measures taken to implement the Declaration". The present note, which provides an overview of the implementation of the Declaration 10 years after its adoption by the General Assembly, highlights some of the main achievements that emerged through its implementation and identifies challenges that remain.

There has been some progress in the implementation of the Declaration, particularly in certain regions and countries, and there are good practices that can serve as an inspiration for implementation elsewhere. In this note, it is observed that, in cases where progress has been made in terms of legislation, there often remains an implementation gap between legal recognition and concrete action.

* E/C.19/2017/1.

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I. Increasing recognition of the Declaration on the Rights of Indigenous Peoples

1. On 13 September 2007, the General Assembly, by its resolution 61/295, adopted the United Nations Declaration on the Rights of Indigenous Peoples. Preparation of the Declaration was carried out over the course of 20 years, beginning in the 1980s with the work of the Working Group on Indigenous Populations, and culminated in the adoption of the Declaration by an overwhelming majority of United Nations Member States in 2007. It is a major milestone and a landmark with respect to the cooperation and solidarity between indigenous peoples and Member States, which has laid the foundation for a new partnership in action at the United Nations and around the world.

2. The United Nations Declaration on the Rights of Indigenous Peoples was adopted by a recorded vote of 143 to 4 (the four being Australia, Canada, New Zealand and the United States of America), with 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, the Russian Federation, Samoa and Ukraine).

3. Since its adoption, all four countries that voted against the adoption of the Declaration have changed their position: in April 2009, the Minister for Indigenous Affairs of Australia affirmed his country's support for the Declaration; in April 2010, at the opening ceremony of the ninth session of the Permanent Forum on Indigenous Issues, the Minister for Maori Affairs of New Zealand announced that the Government had decided to support the Declaration; in November 2010, Canada endorsed the Declaration as an "aspirational document" and, subsequently, at the fifteenth session of the Permanent Forum in May 2016, the Minister for Indigenous and Northern Affairs affirmed Canada's full support for the Declaration; and in December 2010, the remarks of the President of the United States at the White House Tribal Nations Conference included the announcement that the United States had decided to lend its support to the Declaration.[1] Among those countries that abstained, Colombia, Samoa and Ukraine have also expressed their support for the Declaration.

4. Today, the Declaration is the most comprehensive international instrument on the rights of indigenous peoples. It both establishes a universal framework of minimum standards for the survival, dignity and well-being of indigenous peoples and elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous peoples.

5. At its fifteenth session, the Permanent Forum on Indigenous Issues decided to include a discussion on the theme "Tenth anniversary of the United Nations Declaration on the Rights of Indigenous Peoples: measures taken to implement the Declaration" at its sixteenth session in 2017. The present report provides an overview of the implementation of the Declaration 10 years after its adoption by the General Assembly. It highlights some of the main achievements and assesses some of the remaining challenges.

[1] For a recent analysis of these changes in position, see Sheryl Lightfoot, *Global Indigenous Politics: A Subtle Revolution* (Abingdon, United Kingdom, and New York, Routledge, 2016), chap. 4.

II. Recognition of indigenous peoples' rights at the national level

6. The United Nations Declaration on the Rights of Indigenous Peoples was adopted without an agreed definition of the term "indigenous peoples". It does specify, however, that indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions (article 33 (1)). In this regard, the United Nations uses the generic term "indigenous peoples" to identify indigenous groups, communities and nations. No formal universal definition is necessary for the recognition and protection of their rights, and this should not constitute an obstacle to addressing the substantial issues affecting indigenous peoples.[2] One result of the adoption of the Declaration is the growing trend towards increased recognition, as attested by the increasing number of celebrations of the International Day of the World's Indigenous Peoples on 9 August around the world.[3]

7. The issue of definition continues to be raised, especially in the context of Africa and Asia. Following the adoption of the Declaration, the African Commission on Human and Peoples' Rights stated that a definition of the term "indigenous peoples" "is not necessary or useful, as there is no universally agreed definition of the term and no single definition can capture the characteristics of indigenous populations". According to the African Commission, "it is much more relevant and constructive to try to bring out the main characteristics allowing the identification of the indigenous populations and communities in Africa".[4] In the Asian region, the distribution and diversity of such groups vary by country, as does the terminology used. Indigenous peoples have been identified as, for example, tribal peoples, hill tribes, scheduled tribes, *janajatis*, *orang asli*, *masyarakat adat*, Adivasis, ethnic minorities and ethnic nationalities.

8. Not only is recognition a legal matter, but it also encompasses moral and emotional elements. Within a year of the adoption of the Declaration, both Australia and Canada issued formal apologies to the indigenous peoples of their country. Australia apologized for laws and policies of successive Governments that had inflicted harm on indigenous Australians. Canada apologized for the devastating impact of its residential school system on indigenous children and their families, and established a Truth and Reconciliation Commission in 2008 to address this issue. The final report of the Truth and Reconciliation Commission was released in 2015.

A. Constitutional recognition

9. Constitutional reforms can be an essential step towards ensuring the recognition, inclusion and promotion of the rights of indigenous peoples. Since the adoption of the Declaration in 2007, several countries, particularly in the Latin American region, have provided information to the Permanent Forum on Indigenous

[2] See the United Nations Development Group Guidelines on Indigenous Peoples' Issues (February 2008).

[3] For more details, see http://www.un.org/en/events/indigenousday/events.shtml.

[4] Advisory opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous Peoples.

Issues on steps that they have taken to recognize the identity and rights of indigenous peoples.

10. The Constitution of Ecuador, adopted in 2008, establishes an intercultural, plurinational and plurilingual State[5] and recognizes 21 collective rights for indigenous peoples.[6] These include collective ownership of their lands and their autonomy in the government of indigenous territorial constituencies; political participation in official bodies through indigenous representatives; and the right of free prior and informed consultation related to resources located on their traditionally occupied lands, the right to participate in the profits earned from these projects and the right to receive compensation for any social, cultural and environmental damages caused. The Constitution also guarantees indigenous peoples' right to learn in their own language and cultural environment[7] through an intercultural bilingual education system.

11. The 2009 Constitution of the Plurinational State of Bolivia constitutes one of the most comprehensive instruments for achieving recognition of indigenous peoples' rights,[8] including their right to self-determination and self-government. The Bolivian Constitution recognizes indigenous legal systems and collective ownership and autonomous management of indigenous lands. Indigenous peoples also have a constitutional right to prior consultation by the State regarding any legislative or administrative measures that affect them, which extends to the exploitation of natural resources in their territories. In addition to Spanish, all 36 indigenous languages spoken in the country are recognized as official languages.

12. In 2014, Costa Rica reformed its Constitution so as to recognize the country as "multi-ethnic and plurinational" and established a constitutional guarantee to maintain and cultivate the national indigenous languages.[9] In 2014, El Salvador amended its Constitution so as to recognize indigenous peoples and committed to adopting public policies that maintain and develop indigenous identity.[10]

13. The Constitution of Mexico of 1917 was amended in 2015 to incorporate several references to the rights of indigenous peoples, including their right to self-determination through the autonomous exercise of internal government in accordance with their traditional rules, procedures and customs, and their right to elect indigenous representatives for the town council in municipalities with indigenous population.[11] The authorities in Mexico are obligated constitutionally to consult indigenous peoples while preparing the national, state and local development plans, and to incorporate their recommendations and proposals, if

[5] Constitution of the Republic of Ecuador, 2008, article 1.

[6] See A/69/271, para. 12, regarding the Constitution of the Republic of Ecuador, 2008, articles 56 and 57.

[7] Ibid., regarding articles 27 and 29.

[8] See Gonzalo Aguilar and others, "*Análisis comparado del reconocimiento constitucional de los pueblos indígenas en América Latina*", Conflict Prevention and Peace Forum.

[9] Freedom House, "Freedom in the world 2015", Costa Rica country report. Available at https://freedomhouse.org/report/freedom-world/2015/costa-rica.

[10] A/69/271, para. 12.

[11] Political Constitution of the United States of Mexico. Available at http://www.diputados.gob.mx/LeyesBiblio/htm/1.htm.

appropriate. The Constitution of Mexico also recognizes the importance of intercultural bilingual education.

14. The reform in 2014 of the Constitution of Nicaragua entailed provisions recognizing the political-administrative, social and cultural autonomy of the indigenous peoples and ethnic communities of the Atlantic coast as well as their cultures and languages, religions and customs. The Constitution also guarantees indigenous peoples the benefits of their natural resources, the effectiveness of their collective rights to property and the election of their authorities and representatives.[12]

15. Although the 2010 Constitution of Kenya does not explicitly refer to indigenous peoples, it recognizes historically marginalized groups, including pastoralists and hunter-gatherers, that identify themselves as indigenous peoples. It also provides for a range of civil, political, socioeconomic and collective rights that have relevance to indigenous peoples.[13]

16. Other countries have publicly expressed their intention to consider constitutional changes that recognize indigenous peoples. In 2016, Chile initiated an inclusive constitutional reform process. To ensure the participation of indigenous peoples, in compliance with the State's obligations under the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169),[14] the Ministry of Social Development designed a mechanism known as the indigenous participatory constituent process.[15] Australia and New Zealand are also considering constitutional changes that recognize indigenous peoples.[16]

17. The 2008 Constitution of Myanmar does not refer to indigenous peoples, but it does grant some rights to "national races", some of which have used the term "indigenous" to define themselves. Recent developments, such as democratic elections, ongoing reforms and peace negotiations, provide opportunities for progress. The 2015 law on the protection of the rights of national races expands on the rights of ethnic nationalities and has also led to the establishment of a Ministry for Ethnic Affairs.

B. Legal and policy measures

18. In preparation for the annual sessions of the Permanent Forum on Indigenous Issues, the Department of Economic and Social Affairs of the United Nations Secretariat sends a questionnaire to Member States, the United Nations system and indigenous peoples' organizations, requesting information related both to implementation of the Forum's recommendations and to actions taken to achieve the goals of the United Nations Declaration on the Rights of Indigenous Peoples. The

[12] Constitution of Nicaragua, article 180.

[13] A/69/271, para. 12.

[14] United Nations, *Treaty Series*, vol. 1650, No. 28383.

[15] See http://www.constituyenteindigena.cl/proceso-constituyente/.

[16] See *Final Report of the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples* (Canberra, Commonwealth of Australia, June 2015). Available at http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Constitutional_Recognition_of_Aboriginal_and_Torres_Strait_Islander_Peoples/Constitutional_Recognition/Final_Report.

Declaration has been used to foster development of specific national laws and amendment of existing legislation,[17] as reflected in National Law No. 3760 of the Plurinational State of Bolivia of 7 November 2007, amended by Law No. 3897 of 26 June 2008, under which the Declaration was adopted as national law. In Colombia, the law on victims and land restitution of 2011 included the obligation to consult with indigenous peoples, and as a follow-up, Law No. 4633 of 2011 established reparation measures.

19. In 2008, Japan recognized the Ainu people as the indigenous people of Hokkaido.[18] In 2009, the Government created the Council for Ainu Policy Promotion, which is led by the Chief Cabinet Secretary together with Ainu representatives, including women.

20. In the Congo, Act No. 5-2011 on the Promotion and Protection of the Rights of Indigenous Peoples was promulgated in 2011. The law specifically targets the disadvantaged conditions of indigenous peoples and promotes their collective and individual rights.[19] It is consistent with the Declaration on the Rights of Indigenous Peoples, and was developed in a participatory manner, including through consultations with indigenous peoples, the general public, non-governmental organizations, United Nations organizations and relevant public institutions. It is the first instrument of its kind in Africa, constituting an important example of good practice in the region for the recognition and protection of the rights of indigenous peoples.

Land rights

21. Article 26 of the United Nations Declaration on the Rights of Indigenous Peoples provides that indigenous peoples have the right to the lands, territories and resources that they have owned traditionally and to use and develop them and also provides that States shall give legal recognition to those lands. The right to lands, territories and resources and the right to self-determination are among the most important provisions of the Declaration for indigenous peoples and among the most challenging to implement. The challenge is particularly daunting in cases where there is a lack of legal recognition of indigenous peoples' traditional lands and territories, as well as competing land claims and interests. Recognition of collective rights as well as the rights of nomadic, pastoralist and hunter-gatherers has also been particularly challenging. Legal recognition in and of itself is not sufficient: it must be complemented by effective implementation through enabling legislation, executive action and judicial protection. It is also critical that legislation enacted to establish recognition of indigenous peoples' land rights not be undermined or contravened by other laws and regulations.

22. Indigenous peoples' lands and territories continue to face intense pressure, especially from large-scale development projects and natural resource extraction, involving, for example, palm oil plantations, hydroelectric dams and mining

[17] Marco Odello, "The United Nations Declaration on the Rights of Indigenous Peoples", in *Handbook of Indigenous Peoples' Rights*, Corinne Lennox and Damien Short, eds. (Abingdon, United Kingdom, Routledge, 2016), chap. 5, p. 64.

[18] Philippa Fogarty, "Recognition at last for Japan's Ainu", BBC News, 6 June 2008. Available at http://news.bbc.co.uk/2/hi/asia-pacific/7437244.stm.

[19] See A/HRC/18/35/Add.5, paras. 12-13.

operations. The designation of national parks and conservation areas has often resulted in the displacement and dispossession of indigenous peoples, and in this regard, intense pressure continues to be placed on indigenous peoples' communities as they strive to maintain their survival and well-being. This issue is of particular significance for indigenous human rights defenders who continue to advocate for those rights, often at great cost.

23. Despite these trends, however, there is a growing body of jurisprudence which attests to the success of indigenous advocates in establishing the rights of indigenous peoples.

24. In the case of *Cal v. Belize*, the Supreme Court of Belize maintained that in having voted in favour of the Declaration on the Rights of indigenous Peoples, Belize had the obligation to respect the property rights of indigenous peoples.[20]

25. In February 2010, in the landmark recommendation of the African Commission on Human and Peoples' Rights in the case of the Endorois people, the expulsion of the Endorois from their ancestral lands around Lake Bogoria in Kenya was condemned and restitution was recommended.[21] The recommendation is of significance for indigenous peoples' rights globally. For the first time, an international human rights treaty monitoring body expressly recognized the right to development of indigenous peoples.[22] The work of the African Commission on Human and Peoples' Rights, and, specifically, of its Working Group on Indigenous Populations/Communities in Africa, has been central to the advancement of the rights of indigenous peoples in Africa. The Commission and the African Court on Human and Peoples' Rights have played a significant role in strengthening the judicial and quasi-judicial system for the protection of human and peoples' rights on the continent.

26. In its decision No. 35/PUU-X/2012, the Constitutional Court of Indonesia, in finding that customary forests were no longer state forests, thereby recognized the right of indigenous peoples to manage the lands in which they live. The petitioners[23] reminded the Court that the existence and rights of indigenous peoples had been specifically enshrined in the United Nations Declaration on the Rights of Indigenous Peoples.

27. In its 2014 judgment regarding a land rights case in the Chittagong Hill Tracts, the Supreme Court of Bangladesh referred to and quoted extensively from the Declaration on the Rights of Indigenous Peoples in support of its decision.

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[20] See *Aurelio Cal et al. v. Attorney General of Belize*, Supreme Court of Belize (Claims No. 171 and 172 of 2007), 18 October 2007 (Mayan land rights). See also Clive Baldwin and Cynthia Morel, "Recourir à la déclaration des Nations Unies sur les droits des peuples autochtones dans des actions en justice", in *Peuples Autochtones dans le Monde: Les Enjeux de la Reconnaissance*, Irène Bellier, coordinator. (Paris, L'Harmattan, 2013), p. 269.

[21] *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, 2009.

[22] George Mukandi Wachira and Tuuli Karjala, "The struggle for protection of indigenous peoples' rights in Africa", in *Handbook of Indigenous Peoples' Rights*, chap. 26, p. 399. See footnote 17 above.

[23] Indigenous Peoples' Alliance of the Archipelago (AMAN), Indigenous Peoples of Kenegerian Kuntu and Indigenous Peoples of Kasepuhan Cisitu.

28. In 2015, the Caribbean Court of Justice made a judgment in a case between the Maya Leaders Alliance and the Attorney General of Belize with respect to interpretation and application of the revised Treaty of Chaguaramas. In its judgment, the Court found that the United Nations Declaration on the Rights of Indigenous Peoples is relevant to the interpretation of the Constitution of Belize.[24]

Participation in decision-making

29. The full and effective participation of indigenous peoples in matters relating to their collective rights lies at the intersection between articles 3 and 18 of the United Nations Declaration on the Rights of Indigenous Peoples, which affirm, respectively, the right of indigenous peoples to self-determination and to freely pursue their economic, social and cultural development, and the right to participate in decision-making in matters that would affect their rights.

30. Many States recognize indigenous peoples' traditional government institutions and have established formal relationships which vary greatly from country to country and predate the adoption of the Declaration. For example, in 2009, the Act on Greenland Self-Government came into force, which meant that Greenland achieved a higher degree of self-government within Denmark. By Executive Order No. 13647 of 26 June 2013, the President of the United States of America established the White House Council on Native American Affairs to ensure the engagement of the Federal Government in a coordinated and effective government-to-government relationship with federally recognized tribes. The recognition of the Ainu people, referred to above, is another recent example of action in this area.

31. Indigenous peoples have the right to participate in decision-making through their traditional governments as well as in national Governments. Representatives have been elected from among indigenous communities, including the current President of the Plurinational State of Bolivia. There are (or have been) indigenous members of parliament in some countries, including Bangladesh, Burundi, Canada, Denmark, Ecuador, Guatemala, Indonesia, Mexico, Nepal and the Philippines. Indigenous parliaments have been established in Finland, Norway and Sweden for the Sami peoples. Indigenous peoples have largely been involved, however, at the local, municipal and rural levels. Legal reforms aimed at the recognition of the intercultural character of States, the promotion of women's leadership, and the establishment of mechanisms for binding political dialogue between indigenous peoples, private initiatives, parliaments and Governments are necessary steps which are conducive to the full participation of indigenous peoples.[25]

Consultation and consent

32. Under article 19 of the Declaration, States are required to consult and cooperate with indigenous peoples in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that affect them. This provision constitutes an example of what is sometimes referred to as constructive ambiguity, which may be necessary when consensus

[24] *The Maya Leaders Alliance et al. v. the Attorney General of Belize* [2015] CCJ 15 (AJ). See http://www.caribbeancourtofjustice.org/wp-content/uploads/2015/10/2015-CCJ-15AJ.pdf.

[25] See E/C.19/2014/6, paras. 13 and 75-76.

seems beyond reach. There is still little agreement among States and indigenous peoples on how consultations should be conducted in practice, and to what degree free, prior and informed consent is a requirement with regard to state actions. However, there has been some progress.

33. In the first international ruling on indigenous peoples' rights since the 2007 adoption of the United Nations Declaration on the Rights of Indigenous Peoples (*Saramaka People v. Suriname*), the Inter-American Court of Human Rights observed that, in explaining the position of the State in favour of the Declaration, the representative of Suriname had alluded to article 32 and accepted that States should seek prior consultation to prevent a disregard for human rights; and, further, that consultation should not be viewed as an end in itself, but should serve the purpose of respecting the interests of those who used the land.[26] In its landmark 2012 judgment on the case *Kichwa Indigenous People of Sarayaku v. Ecuador* (2012) on free, prior and informed consent, the Court concluded that the obligations of States to consult with indigenous peoples is now a general principle of international law.[27]

34. In Latin America, some countries recognize the importance of consultation with indigenous peoples. Following the promulgation in September 2011 of Act No. 29785 on the Right of Indigenous or Aboriginal Peoples to Prior Consultation, Peru moved to implement it through regulations approved by Supreme Decree No. 001-2012-MC. A methodological guide for consultation with indigenous peoples was prepared and training programmes on the right to consultation were offered to both indigenous peoples and government officials. In the Plurinational State of Bolivia, following the promulgation of Act No. 222 of 10 February 2012 on Consultation of Indigenous Peoples of the Isiboro-Sécure Indigenous Territory and National Park, processes of prior consultation were undertaken in cases extending beyond extractive projects, including infrastructure development. On 15 November 2013, Chile adopted Supreme Decree No. 66/2013, which regulates the procedure for consultation with indigenous peoples pursuant to the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), after a process of consultation with indigenous peoples which began in March 2011. At the same time, Chile clarified that consultation did not include the right of indigenous peoples to veto. Ecuador is continuing to work on an act on consultation with communes, communities, peoples and nationalities, which will regulate the application of free, prior and informed consent. The Mexican National Commission for the Development of Indigenous Peoples organized a consultation on the priorities for the development of indigenous peoples, which resulted in a national development plan covering the period 2013-2018.

35. In Asia, in 2012, the National Commission on Indigenous Peoples of the Philippines developed revised guidelines on free, prior and informed consent and related processes, which include consent by indigenous peoples. On the basis of a

[26] Inter-American Court of Human Rights, *Case of the Saramaka People v. Suriname. Judgment of November 28, 2007*, para. 131, footnote 131. See, also, Clive Baldwin et Cynthia Morel, "Recourir à la Déclaration des Nations Unies sur les droits des peuples autochtones dans des actions en justice" (see footnote 20 above).

[27] Rachel Sieder, "Indigenous peoples' rights and the law in Latin America", in *Handbook of Indigenous Peoples' Rights*, chap. 27, p. 419. See footnote 17 above.

series of nationwide public hearings, in August 2013, the Human Rights Commission of Malaysia issued a report on the land rights of indigenous peoples in which it recommended that indigenous customary rights to land should be recognized and called for the establishment of an independent national commission on indigenous peoples.

Education

36. Article 14 of the Declaration states that indigenous peoples have the right to their own educational systems, in their own languages, as appropriate to their cultural methods, and that States shall protect that right. The concept of intercultural education has been applied in targeted policies and programmes for indigenous peoples, especially in Latin America and the Caribbean. National education policies and curricula have been reformed to include an intercultural perspective which integrates both indigenous learning systems and traditional knowledge. The Government of Burkina Faso has introduced schooling for nomadic children through the creation of mobile schools. In Ecuador, the revitalization of ancestral knowledge pursuant to the Intercultural Education (Organization) Act aims towards the development of an intercultural society within the intercultural bilingual education system. The Plurinational State of Bolivia is implementing the Avelino Siñani-Elizardo Perez Act, which envisages the interplay among a basic plurinational curriculum, a regionalized curriculum and a diversified curriculum which is culturally, linguistically and territorially appropriate. In Chile, the National Indigenous Development Corporation has implemented the establishment of more than 150 intercultural kindergartens which received school materials relating to indigenous cultures and, in 2012, it modified the curricular bases so as to adapt them to the learning need of indigenous pupils. New Zealand has implemented a strategy covering the period 2013-2017 which aims at increasing the use of the Maori language in education. In Norway, the Kindergarten Act provides that kindergartens must take account of children's social, ethnic and cultural background, including the language and culture of Sami children. Bangladesh has taken steps to introduce education in the mother tongues of five major indigenous peoples in the country.[28]

Health

37. Article 24 of the Declaration determines that indigenous peoples have the right to the highest attainable standard of health and to their traditional medicines and the right to maintain their health practices. In the area of health, several countries have integrated the culture and traditional knowledge of indigenous peoples into public-health policies and plans at the national, regional and local levels. In Malaysia, mobile health units such as village health teams and the flying doctor service have increased access to almost 90 per cent of indigenous peoples living in remote areas. In Paraguay, the 2008 national policy on indigenous health, which later gave rise to a directorate for indigenous health, highlighted the need to establish family care units and to employ indigenous personnel. Ecuador is promoting culturally

[28] Mathura Bikash Tripura, "Indigenous languages: preservation and revitalization — articles 13, 14 and 16 of the United Nations Declaration on the Rights of Indigenous Peoples" (PFII/2016/EGM), paper prepared for the International Expert Group Meeting on Indigenous Languages, United Nations Headquarters, 19-21 January 2016.

appropriate deliveries in public hospitals and is revitalizing the role of midwives in the national health system. In Australia, work is under way on a new social and emotional well-being framework for Aboriginal and Torres Strait Islander peoples which recognizes the importance of connections to culture in the context of the health of indigenous peoples. On 19 December 2013, the Plurinational State of Bolivia adopted the Ancestral Bolivian Traditional Medicine Act with the objective of regulating the exercise and practice of traditional ancestral medicine in the national health system.

Indigenous children

38. Indigenous children are explicitly referred to in five articles of the Declaration, and youth are mentioned in articles 21 and 22. Article 22 requested that particular attention be paid to the rights and special needs of children (as well as other vulnerable indigenous persons) upon the implementation of the Declaration. In 2009, Paraguay established a support unit for indigenous children and adolescents to address the situation of street children and young people. Australia funds diversionary programmes for indigenous children to help them avoid incarceration and to tackle the incidence of petrol sniffing in remote indigenous communities. The Ministry of Education of the Plurinational State of Bolivia provides annual scholarships to students with limited financial resources. Further, there are special quotas for indigenous students in the indigenous universities. Indigenous children and young people in Chile can apply to an indigenous grants programme, which is designed to assist indigenous students financially. In Finland, the Ministry of Education and Culture has taken long-term measures to support the activities of young Sami people as part of the overall youth policy, including the establishment of a youth council in 2010.

39. While the description of policies, programmes and activities as provided in this note is far from exhaustive, it does indicate the range and diversity of actions that have been undertaken at the national level. Although it is difficult to attribute these activities directly to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples, it can be stated that the Declaration does indeed play a role in informing and influencing decision-making at the national level. The Declaration has raised the expectations of indigenous peoples that States and the United Nations system will do more to promote their rights and will take concrete actions to ensure that the minimum standards set out in the Declaration are fulfilled. In this context, the mobilization and advocacy of indigenous peoples for the promotion and protection of their rights, as captured in the Declaration, constitute an integral component of its implementation.

III. Achievements at the international level

World Conference on Indigenous Peoples

40. In September 2014, the General Assembly organized the high-level plenary meeting of the Assembly known as the World Conference on Indigenous Peoples in order to share perspectives and best practices on the realization of the rights of indigenous peoples, including pursuit of the objectives of the United Nations

Declaration on the Rights of Indigenous Peoples. In the outcome document of the World Conference,[29] States reaffirmed their commitment to promoting and protecting the substantive rights of indigenous peoples, including those affirmed in the Declaration on the Rights of Indigenous Peoples. States also committed to take specific actions at the national and local levels to implement those rights through the development of legal, policy and administrative measures. The outcome document also called upon the United Nations system to prepare a system-wide action plan to ensure a coherent approach to achieving the ends of the Declaration.

41. The issue of participation of indigenous peoples at the United Nations was also raised in the outcome document, within the context of article 41 of the Declaration which states that "(w)ays and means of ensuring participation of indigenous peoples on issues affecting them shall be established". Some of the challenges faced by indigenous peoples in participating at the United Nations were highlighted in the report of the Secretary-General (A/HRC/21/24) on the ways and means of promoting participation at the United Nations of indigenous peoples' representatives on issues affecting them. It was noted in the report that there are important differences between indigenous peoples' organizations and non-governmental organizations. While at the national level, the State has often recognized these differences, existing mechanisms at the United Nations have not done so. A conclusion of the report was that the participation of indigenous peoples in the work of the United Nations has been a positive experience for the Organization and has enabled historically excluded peoples to work together peacefully and in partnership with States to advance their issues and elaborate their rights.

42. The President of the General Assembly has appointed four advisers — two from Member States and two from indigenous peoples — to assist him in carrying out consultations on the possible measures necessary, including procedural and institutional steps and selection criteria, to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them. Consultations were carried out during 2016 and will continue in 2017. On the basis of these consultations, the President of the Assembly will prepare a compilation of the views presented during the consultations, including good practices within the United Nations regarding indigenous peoples' participation, which will form the basis for a draft text to be finalized and adopted by the Assembly during its seventy-first session.[30]

43. The outcome document of the World Conference had called for a system-wide action plan to ensure a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples. The system-wide action plan was developed under the leadership of the Under-Secretary-General for Economic and Social Affairs, following consultations with indigenous peoples, Member States and the Inter-Agency Support Group on Indigenous Peoples' Issues.

44. The plan focuses on the following action areas: (a) raising of awareness on the United Nations Declaration on the Rights of Indigenous Peoples and indigenous issues; (b) support for the implementation of the Declaration, particularly at the

[29] General Assembly resolution 69/2.

[30] See General Assembly resolution 70/232, para. 19.

country level, (c) support for the attainment of indigenous peoples' rights in the implementation and review of the 2030 Agenda for Sustainable Development,[11] (d) conduct of an exercise to map existing policies, standards, guidelines, activities, resources and capacities within the United Nations and the multilateral system so as to identify opportunities and gaps; (e) development of the capacities of States, indigenous peoples, civil society and United Nations personnel at all levels; and (f) support for the participation of indigenous peoples in the processes that affect them.

45. The primary aim of the action plan is to increase coherence of the United Nations system in addressing the rights and well-being of indigenous peoples in its work, including in support of Member States, with the ultimate goal of implementing the Declaration. The United Nations system is already implementing the action plan, which was introduced to indigenous peoples and Member States at the opening of the fifteenth session of the Permanent Forum on Indigenous Issues in May 2016.

46. In the outcome document of the 2014 World Conference, the Human Rights Council was invited to review the mandates of its existing mechanisms, in particular the Expert Mechanism on the Rights of Indigenous Peoples, with a view to modifying and improving the Expert Mechanism so that it could more effectively promote respect for the United Nations Declaration on the Rights of Indigenous Peoples, including through better assisting Member States in monitoring, evaluating and improving the achievement of the ends of the Declaration.

47. On 30 September 2016, the Human Rights Council adopted its resolution 33/25,[12] in which the Council decided to amend the mandate of the Expert Mechanism on the Rights of Indigenous Peoples, which should provide the Council with expertise and advice on the rights of indigenous peoples as set out in the Declaration, and assist Member States, upon request, in achieving the ends of the Declaration through the promotion, protection and fulfilment of the rights of indigenous peoples. The revised mandate greatly strengthens the role of the Expert Mechanism in implementing the Declaration, including through an annual study on its achievement, disseminating good practices and lessons learned and providing technical advice and facilitating dialogue, at the request of Member States, indigenous peoples and/or the private sector.

United Nations system

48. Under article 41 of the United Nations Declaration on the Rights of Indigenous Peoples, the organs and specialized agencies of the United Nations system and other intergovernmental organizations are required to contribute to the full realization of the provisions of the Declaration through the mobilization of, inter alia, financial cooperation and technical assistance. Article 42 states that the United Nations, including the Permanent Forum on Indigenous Issues, and specialized agencies, shall promote respect for and full application of the provisions of the Declaration and follow up its effectiveness. In 2009, the Department of Economic and Social

[11] General Assembly resolution 70/1.

[12] See *Official Records of the General Assembly, Seventy-first Session, Supplement No. 53A* and corrigendum (A/71/53/Add.1 and Corr.1), chap. II.

Affairs organized an international expert group meeting on the role of the Permanent Forum in relation to article 42 of the Declaration. Building upon the findings of that meeting, the Permanent Forum, in the annex to the report on its eighth session (E/2009/43), issued general comments to determine the obligations of the Forum as set out in article 42 and how the Forum could fulfil those obligations. The Permanent Forum continues to integrate its mandates, stemming from the Declaration and from the resolutions of the Economic and Social Council, through its activities, recommendations and analysis.

49. Since the adoption of the Declaration in 2007, several United Nations entities and intergovernmental organizations have revisited their own work with indigenous peoples, either by developing corporate strategies, strategic frameworks and policies or by implementing specific projects and initiatives that respect the cultural and linguistic diversity and development priorities of indigenous peoples.[11] The guidelines on indigenous peoples designed to assist the United Nations system in mainstreaming and integrating indigenous peoples' issues into processes and programmes at the country level were approved by the United Nations Development Group in February 2008. The Food and Agriculture Organization of the United Nations (FAO), the International Fund for Agricultural Development (IFAD), the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD Programme), the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), the United Nations Human Settlements Programme (UN-Habitat), the World Bank, the Inter-American Development Bank, the International Finance Corporation, the Asian Development Bank, the European Union and the European Bank for Reconstruction and Development, among other organizations, have all developed policies on engagement with indigenous peoples, while others, such as the United Nations Educational, Scientific and Cultural Organization (UNESCO), are in the process of doing so. In addition, United Nations entities have prepared a range of guidelines and manuals which draw extensively on the Declaration on the Rights of Indigenous Peoples.

2030 Agenda for Sustainable Development

50. The Permanent Forum considered that the Millennium Development Goals had not taken full account of the specificities of indigenous peoples and that the indicators on progress, by measuring national averages, had failed to capture the specific situation of indigenous peoples. Indigenous peoples were largely missing in the implementation, monitoring and evaluation of the Goals.

51. In contrast to the Millennium Development Goals, the Sustainable Development Goals include explicit consideration of indigenous peoples, with six references to indigenous peoples in the 2030 Agenda for Sustainable Development. Two of the Sustainable Development Goal targets make specific references to indigenous peoples, committing to double agricultural output of indigenous small-scale farmers (target 2.3) and to ensure equal access to education for indigenous children (target 4.5).

[11] See background note for the development of a system-wide action plan. Available at http://www.un.org/esa/socdev/unpfii/documents/2016/egm/9_UN_Policies_IP_SWAP.pdf.

52. There is also a strong commitment in the 2030 Agenda to empower and engage indigenous peoples in implementing and reviewing progress in achieving the Goals. Member States are encouraged to include the contributions of indigenous peoples in the regular and inclusive reviews of progress.[14] Indigenous peoples participated in the first high-level political forum on sustainable development held after the adoption of the 2030 Agenda, in New York from 11 to 20 July 2016. The indigenous peoples major group participated in the official meetings of the high-level political forum and made several statements both in the general thematic discussions and during the national voluntary reviews.

53. Another major challenge to be addressed remains the limited availability of reliable data on the situation of indigenous peoples at the global, regional and national levels. Consistent with articles 18 and 19 of the Declaration and in line with the implementation of the 2030 Agenda for Sustainable Development, with the pledge that "no one will be left behind", the Permanent Forum strongly recommended at its fifteenth session that Member States and funds, programmes and specialized agencies of the United Nations system ensure the disaggregation of data on the basis of indigenous identifiers/ethnicity.[15]

IV. Conclusions

54. The implementation of the United Nations Declaration on the Rights of Indigenous Peoples has achieved some major successes. Constitutional and legislative frameworks that recognize indigenous peoples, including targeted policies and programmes, have been developed in some countries; and there is a need for Member States to cooperate in transferring these good practices for replication in other parts of the world. Furthermore, in some cases, there continues to be a gap between the formal recognition of indigenous peoples and the implementation of policies on the ground.

55. Through the organization of the World Conference on Indigenous Peoples by the General Assembly in September 2014, there was a galvanization of attention to the need for concrete action to enable achievement of the Declaration on the Rights of Indigenous Peoples. The process for the World Conference constituted in itself a good practice on the partnership between indigenous peoples and Member States, which worked together to identify gains and priorities for future action. The Assembly's process of considering ways to enable the participation of indigenous peoples at the United Nations represents a continuation of that good practice. In this regard, the outcome document of the World Conference is an accurate reflection of what States and indigenous peoples determined to be the most important elements of the focus needed to make the Declaration a reality on the ground. Of particular importance are the commitments made by States to implement national action plans, strategies and other measures and to take legislative, policy or administrative

[14] For more detailed information on indigenous peoples and the 2030 Agenda for Sustainable Development, see the document thereon submitted to the Forum at its sixteenth session under agenda item 9.

[15] See *Official Records of the Economic and Social Council, 2016, Supplement No. 23* (E/2016/43), chap. I.B, para. 28.

measures to achieve the ends of the Declaration. States also committed to engage in these efforts in consultation and cooperation with indigenous peoples.

56. The Commission on the Status of Women provides another example of concrete action. In response to the concerns of indigenous women, as reflected in recommendations of the Permanent Forum on Indigenous Issues, the General Assembly, in paragraph 19 of the outcome document of the 2014 World Conference, invited the Commission to consider the empowerment of indigenous women as a theme for a future session. At its sixtieth session in March 2016, the Commission decided to consider the empowerment of indigenous women as a focus area during its sixty-first session in 2017.[36]

57. Articles 41 and 42 of the Declaration assign clear mandates to the United Nations system and its specialized agencies, including at the country level, to contribute to the full realization of the Declaration and to follow up on its effectiveness. The development of the system-wide action plan on the rights of indigenous peoples is an important step in this direction. For the effective implementation of the action plan, it is important that the agencies, funds and programmes of the United Nations system, as well as other intergovernmental organizations, work together at all levels from the global to the local. It is important that indigenous peoples engage with the United Nations system to ensure that the action plan contributes positively to the rights and well-being of indigenous peoples. In this regard, the Permanent Forum on Indigenous Issues, the Special Rapporteur on the rights of indigenous peoples and the Expert Mechanism on the Rights of Indigenous Peoples can play a key role through the exercise of their complementary mandates.

58. In the outcome document, States also committed to working with indigenous peoples to disaggregate data and to ensure that indigenous peoples have access to high-quality education and health care and that indigenous children are afforded the right to enjoy their own cultures and speak their own languages. States committed to intensifying efforts to eliminate violence, especially against indigenous women, and to supporting the empowerment of indigenous youth. All of these commitments require adequate legislative and policy action, as well as capacity-building of civil servants and overall awareness-raising on the Declaration and its provisions.

59. The implementation of the 2030 Agenda for Sustainable Development, with its pledge to leave no one behind, provides an opportunity for developing indicators to measure the progress of development initiatives that address the needs of indigenous peoples. To ensure that no one is left behind, it is imperative that disaggregated data be gathered on the situation of indigenous peoples, including with regard to health, education and income. Furthermore, sustainable development can be achieved only if the full and effective participation of indigenous peoples in matters that concern or may affect them is guaranteed. For this purpose, indigenous governance structures and institutions must be strengthened.

[36] See Economic and Social Council resolution 2016/3.